IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 694 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BRAHAMSINH BINDUBHAI VALMIKI

Versus

SITARAM BANSIDHAR AHIR

Appearance:

MR RAMNANDAN SINGH for Petitioner

MR AY KOGJE for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/02/2001

ORAL JUDGEMENT

#. Rule. Mr.Kogje, learned advocate appears by way of caveat and waives service of rule.

#. By consent of the parties, the matter is taken up for

final hearing today.

#. By this Civil Revision Application, the revisioner-original plaintiff in Rent Suit No.212/99 pending in the court of Small Cause Judge at Baroda seeks to challenge judgment and order passed in Civil Misc. Appeal No.202/99 by 2nd Extra Assistant Judge, Baroda on 30.10.1999.

3.1 The suit was preferred by the plaintiff for declaration and injunction against defendants restraining from disturbing the possession of the plaintiff of suit property situated in Fatehgunj area of Baroda in "Bansi Chawl". Application for interim injunction came to be rejected by the trial court. The plaintiff therefore preferred Civil Misc. Appeal No.202/99 which also was dismissed. Hence, this revision by the original plaintiff.

#. Mr.Singh has argued this matter at length and has read the orders of both the courts below. It is borne out from the contentions that the court below has decided the matter on presumption and assumption and the evidence in favour of the plaintiff has not been considered. There is no material to indicate that, he has been tenant of the premises and that the defendants have taken undue advantage of the interregnum period during which the notice was issued by the court and the premises has been demolished and the plaintiff's belongings have been thrown out of the premises. Mr.Singh submitted that, earlier the suit was filed by the plaintiff, but was withdrawn though unconditionally, on promises given by the defendants. The court below has proceeded with the earlier suit, but was withdrawn because there was no tenancy right as it came to an end at that point of time. Mr.Singh submitted that, the plaintiff has been paying the tax which has not been considered by the trial court as well as by the lower appellate court. He, therefore, urged that, this revision may be allowed.

#. Mr.Kogje, learned advocate appearing for the respondents - defendants submitted that, this is a revision application under section 115 of the Civil Procedure Code, the scope of which is very limited and without there being any jurisdictional error, the court may not exercise the revisional powers on facts. There are concurrent findings of two courts below based on material on record. According to Mr.Kogje, revisioner - plaintiff has made an attempt to abuse the process of law, and therefore, this court may not interfere.

#. Considering the rival side contentions, it is evident that the revisioner seeks to challenge in this revision, concurrent findings of fact by both the Courts below rendered on the basis of documentary evidence, but has no answer to the question posed by the courts below. Earlier the suit was preferred and was withdrawn unconditionally. There is nothing to show that thereafter the plaintiff continued in possession of the premises as the tenant and was in fact in possession of the suit premises when the present suit was filed. It also requires to be noted that, according to the plaintiff, he has been tenant of the premises at the rent of Rs.60/- per month which premises he had taken from the father of the defendants. Receipts produced on record are of Rs.35/- only. The difference in the rent amount, is not explained. The receipts are for a period prior to 1997. Further, it also requires to be noted that, the Commissioner's report clearly indicates that, there was no old construction which has been demolished as is alleged by the revisioner plaintiff to have been done by the defendants/respondents taking undue advantage of interregnum period of notice. In fact, if the document heavily relied upon by Mr.Singh viz., the order under section 23-A of the Bombay Rent Act passed by the Additional Collector at Baroda dated 30.6.1999, is perused, there is reference to the Panchnama of the place drawn by the Mamlatdar, Baroda in that proceedings. It indicates that the premises is not occupied by any one. However, in that order, Additional Collector passed the order in favour of the plaintiff applicant then.

#. Considering the scope for revision under section 115 of the Civil Procedure Code as established by various pronouncements, this court is not inclined to interfere with the concurrent findings of fact arrived at by both the courts below. There appears no substance in the argument that the courts below have come to this conclusion on presumption. In fact, the courts below have considered the evidence and have interpreted the evidence on prima facie basis and in absence of any prima facie material to indicate the possession which is reflected from the Panchnama drawn by the Court Commissioner. This court is therefore, not inclined to entertain this revision application, without making any further observations on merits considering the pendency of the suit.

#. For the reasons stated above, this court finds no reason to interfere with the order as no factual or legal error is found, least any jurisdictional error, sufficient enough to show indulgence in exercise of

revisional jurisdiction. Revision Application stands dismissed. Rule discharged. No costs.

(A.L.Dave,J)
(pathan)